



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 165

[Docket Number USCG-2016-0288]

RIN 1625-AA00

Safety Zone, Banks Channel; Wrightsville Beach, NC

AGENCY: Coast Guard, DHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to establish a temporary safety zone on the navigable waters adjacent to Harbor Island and Wrightsville Beach, NC. This proposed safety zone would restrict vessel movement on portions of Masonboro Inlet, Banks Channel, and Motts Channel during the PPD Ironman NC event on October 22, 2016. This action is necessary for the safety of life on the surrounding navigable waters during this event. We invite your comments on this proposed rulemaking.

DATES: Comments and related material must be received by the Coast Guard on or before [INSERT DATE 15 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments identified by docket number USCG-2016-0288 using the Federal eRulemaking Portal at <http://www.regulations.gov>. See the “Public Participation and Request for Comments” portion of the SUPPLEMENTARY INFORMATION section for further instructions on submitting comments.

FOR FURTHER INFORMATION CONTACT: If you have questions about this proposed rulemaking, call or email Petty Officer Ryan Phillips, Coast Guard Sector North Carolina, Coast Guard; telephone (910)772-2212, e-mail Ryan.A.Phillips@uscg.mil.

SUPPLEMENTARY INFORMATION:

I. Table of Abbreviations

CFR	Code of Federal Regulations
DHS	Department of Homeland Security
FR	Federal Register
NPRM	Notice of proposed rulemaking
§	Section
U.S.C.	United States Code

II. Background, Purpose, and Legal Basis

On October 22, 2016, PPD Ironman NC notified the Coast Guard that as part of the PPD Ironman NC event approximately 2500 swimmers will compete along a course starting at Masonboro Inlet from 7 a.m. to 11 a.m. on October 22, 2016. The course begins at approximate location latitude 34°11'13"N longitude 077°48'53"W, continuing north in Banks Channel crossing at the approximate location latitude 34°12'14"N longitude 077°48'04W into Motts channel heading west stopping at Sea Path Marina where swimmers will exit the water approximately at latitude 34°12'44"N longitude 077°48'25"W in Wrightsville Beach, NC.

The purpose of this rulemaking is to ensure the safety of swimmers and rescue crews from hazards associated with vessel traffic and other hazards. The Coast Guard proposes this rulemaking under authority in: 33 U.S.C. 1231; 33 CFR 1.05-1, 6.04-1, 6.04-6, 160.5; Department of Homeland Security Delegation No. 0170.1.

III. Discussion of Proposed Rule

The COTP proposes to establish a safety zone from 7 a.m. to 11 a.m. on October 22, 2016. The safety zone would cover all navigable waters starting at the approximate position latitude 34°11'13"N, longitude 077°48'53"W, heading north to approximate position latitude 34°12'14"N, longitude 077°48'04"W, traveling west and ending at approximate position latitude 34°12'44"N, longitude 077°48'25"W . The duration of the zone is intended to ensure the safety of swimmers during the scheduled 7 a.m. to 11 a.m. swimming event. Except for vessels authorized by the COTP North Carolina or her designated representative, no person or vessel except safety crew designated by PPD Ironman NC may enter or remain in the safety zone. All persons and vessels granted permission to enter the zone must comply with the instructions of the COTP North Carolina or her designed representative.

Notification of the temporary safety zone will be provided to the public via marine information broadcasts. The regulatory text we are proposing appears at the end of this document.

IV. Regulatory Analyses

We developed this proposed rule after considering numerous statutes and Executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes and Executive orders and we discuss First Amendment rights of protestors.

A. Regulatory Planning and Review

Executive Orders 12866 and 13563 direct agencies to assess the costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits. Executive Order 13563 emphasizes the importance of quantifying both costs and benefits, of reducing costs, of harmonizing rules, and of promoting flexibility.

This NPRM has not been designated a “significant regulatory action,” under Executive Order 12866. Accordingly, the NPRM has not been reviewed by the Office of Management and Budget.

This regulatory action determination is based on the size, location, duration, and time-of-day of the safety zone. Coast Guard would issue a Broadcast Notice to Mariners via VHF-FM marine channel 16 about the zone, and the rule would allow vessels to seek permission to enter the zone.

B. Impact on Small Entities

The Regulatory Flexibility Act of 1980, 5 U.S.C. 601–612, as amended, requires Federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term “small entities” comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard certifies under 5 U.S.C. 605(b) that this proposed rule would not have a significant economic impact on a substantial number of small entities.

While some owners or operators of vessels intending to transit the safety zone may be small entities, for the reasons stated in section IV.A above this proposed rule would not have a significant economic impact on any vessel owner or operator.

If you think that your business, organization, or governmental jurisdiction qualifies as a small entity and that this rule would have a significant economic impact on it, please submit a comment (see ADDRESSES) explaining why you think it qualifies and how and to what degree this rule would economically affect it.

Under section 213(a) of the Small Business Regulatory Enforcement Fairness Act of

1996 (Public Law 104-121), we want to assist small entities in understanding this proposed rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section. The Coast Guard will not retaliate against small entities that question or complain about this proposed rule or any policy or action of the Coast Guard.

C. Collection of Information

This proposed rule would not call for a new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520).

D. Federalism and Indian Tribal Governments

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this proposed rule under that Order and have determined that it is consistent with the fundamental federalism principles and preemption requirements described in Executive Order 13132.

Also, this proposed rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities between the Federal Government and Indian tribes. If you believe this proposed rule has implications for federalism or Indian tribes, please contact the person listed in the FOR FURTHER INFORMATION CONTACT section.

E. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this proposed rule would not result in such an expenditure, we do discuss the effects of this rulemaking elsewhere in this preamble.

F. Environment

We have analyzed this proposed rule under Department of Homeland Security Management Directive 023-01 and Commandant Instruction M16475.ID, which guide the Coast Guard in complying with the National Environmental Policy Act of 1969 (42 U.S.C. 4321-4370f), and have made a preliminary determination that this action is one of a category of actions that do not individually or cumulatively have a significant effect on the human environment. This proposed rule involves: a safety zone lasting 4 hours that would prohibit entry into the proposed safety zone. Normally such actions are categorically excluded from further review under paragraph 34(g) of Figure 2-1 of Commandant Instruction M16475.ID. We seek any comments or information that may lead to the discovery of a significant environmental impact from this proposed rule.

G. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the FOR FURTHER INFORMATION CONTACT section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places, or vessels.

V. Public Participation and Request for Comments

We view public participation as essential to effective rulemaking, and will consider all comments and material received during the comment period. Your comment can help shape the outcome of this rulemaking. If you submit a comment, please include the docket number for this rulemaking, indicate the specific section of this document to which each comment applies, and provide a reason for each suggestion or recommendation.

We encourage you to submit comments through the Federal eRulemaking Portal at <http://www.regulations.gov>. If your material cannot be submitted using <http://www.regulations.gov>, contact the person in the FOR FURTHER INFORMATION CONTACT section of this document for alternate instructions.

We accept anonymous comments. All comments received will be posted without change to <http://www.regulations.gov> and will include any personal information you have provided. For more about privacy and the docket, you may review a Privacy Act notice regarding the Federal Docket Management System in the March 24, 2005, issue of the **Federal Register** (70 FR 15086).

Documents mentioned in this NPRM as being available in the docket, and all public comments, will be in our online docket at <http://www.regulations.gov> and can be viewed by following that website's instructions. Additionally, if you go to the online docket and sign up for email alerts, you will be notified when comments are posted or a final rule is published.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, and Waterways.

For the reasons discussed in the preamble, the Coast Guard proposes to amend 33 CFR part 165 as follows:

PART 165-- REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1, 6.04–1, 6.04–6, 160.5; Department of Homeland Security Delegation No. 0170.1.

2. Add, under the undesignated center heading Fifth Coast Guard District, temporary § 165.T05-0437 to read as follows:

§ 165.T05-0437 Safety Zone, Wrightsville Beach, NC

(a) Definitions. For the purposes of this section, Captain of the Port means the Commander, Sector North Carolina. Representative means any Coast Guard commissioned, warrant, or petty officer who has been authorized to act on the behalf of the Captain of the Port.

(b) Location. The following area is a safety zone: all waters at Masonboro Inlet starting at approximate location latitude 34°11'13"N longitude 077°48'53"W, heading north in Banks Channel at approximate location latitude 34°12'14"N longitude 077°48'04W, heading west into Motts channel and stopping at Sea Path Marina approximately at latitude 34°12'44"N longitude 077°48'25"W in Wrightsville Beach, NC.

(c) Regulations. (1) The general regulations contained in § 165.23 apply to the area described in paragraph (b) of this section.

(2) Persons or vessels requesting entry into or passage through any portion of the safety zone must first request authorization from the Captain of the Port, or a designated representative. The Captain of the Port or his designated representative can be contacted at telephone number (910) 343-3882 or by radio on VHF Marine Band Radio, channels 13 and 16.

(d) Enforcement. The U.S. Coast Guard may be assisted in the patrol and enforcement of the zone by Federal, State, and local agencies.

(e) Enforcement period. This section will be enforced from 7 a.m. to 11 a.m. on October 22, 2016, unless cancelled earlier by the Captain of the Port.

Dated: July 14, 2016.

P. J. Hill,
Captain, U.S. Coast Guard,
Captain of the Port North Carolina.

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